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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/004,346 | 11/01/2001 | Robert N. Cossins | 396451 | 3708 |

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LATHROP & GAGE, L.C.
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EXAMINER

RAMOS FELICIANO, ELISEO

ART UNIT PAPER NUMBER

2681

DATE MAILED: 11/10/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/004,346

Applicant(s)

COSSINS et al.

Examiner

ELISEO RAMOS-FELICIANO

Art Unit

2681



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claim 1** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over *claim 11 of U.S. Patent No. 6,343,290*. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

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Regarding claim 1 of the instant application, claim 1 of U.S. Patent No. 6,343,290 reads as follows:

"11. A system for managing a network using a processor, the system configured to generate display elements comprising:

geographic elements having geographic characteristics;

network elements having network characteristics and generated for display in relation to the geographic elements; and

performance elements having performance characteristics and each generated for display proximal to a corresponding network element."

It is evident that the claims are essentially the same. The only difference is that the subject claim of the present application reads "sectored performance elements having sectored performance characteristics" in contrast to the claim cited above which does not include the underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at the time the invention was made because a "sectored performance element" is considered to be a subset of the inclusive set represented by "performance element". In the same way that different performance elements can be generated for display, subsets, sections or sectors of those performance elements can also be generated for display. Additionally, in the same way that particular "performance characteristics" correspond to "performance elements", "sectored performance characteristics" also correspond to "sectored performance elements".

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1 and 2** are rejected under 35 U.S.C. 102(b) as being anticipated by Sprecher et al. (US Patent Number 5,285,494).

Regarding **claim 1**, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor and is configured to generate display elements; see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the display elements include:

geographic elements (e.g. West L.A.) having geographic characteristics (e.g. located to the west of Los Angeles);

network elements (cell sites) having network characteristics (e.g. cell site outages and traffic patterns) and generated for display in relation to the geographic elements (column 3, lines 50-56); and

sector performance elements having sector performance characteristics (e.g. critical, major, minor, ..., normal, etc.), each generated for display proximal to a corresponding network element (see "LEGEND" in Figure 4B, and column 4, lines 13-24). According to the LEGEND

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Figure 4B exhibits a "NORMAL" condition view. Figure 4C, exhibits a sector view of that in Figure 4B.

Regarding **claim 2**, Sprecher et al. discloses everything claimed as applied above (see *claim 1*). In addition, Sprecher et al. discloses a plurality of sectored performance elements (e.g. cell site status, such as outages, and traffic patterns) for each network element (e.g. cell sites). Each sectored performance element have a corresponding performance characteristic (e.g. critical, major, minor, ..., normal, etc.); see column 3, lines 50-56, column 4, lines 13-24 and Figure 4B, *inter alia*.

Citation of Pertinent Prior Art

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Busuioc et al. (U.S. Patent Number 6,151,309) see Figures 1 and 3;

Tayloe et al. (U.S. Patent Number 5,095,500) see Figures 2-4 and the abstract;

Yokota (U.S. Patent Number 6,587,787) see the abstract and Figures 4 and 6-9.

Conclusion

6. Any response to this Office action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306

for formal communications intended for entry, informal communications or draft communications; in the case of informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to

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Crystal Park II
2121 Crystal Drive
Arlington, VA
Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eliseo Ramos-Feliciano whose telephone number is (703) 305-0078. The examiner can normally be reached on Monday through Thursday (first week of bi-week) and Monday through Friday (second week of bi-week) from 8:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh H. Tran, can be reached on (703) 305-4040.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700, or call Group customer service at (703) 306-0377.

ELISEO RAMOS-FELICIANO
PATENT EXAMINER

ERF/erf
October 31, 2003.

Marsha D Banks-Harold
MARSHA D. BANKS-HAROLD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600